

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

HUDSON SURGICAL DESIGN, INC.)	
)	
Plaintiff,)	
)	Civil Action No. 08 C 1566
v.)	
)	Judge Virginia M. Kendall
ZIMMER HOLDINGS, INC., ZIMMER,)	Magistrate Judge Nan R. Nolan
INC., RUSH SYSTEM FOR HEALTH)	
and RUSH UNIVERSITY MEDICAL)	
CENTER,)	
)	
Defendants.)	
)	

JOINT INITIAL STATUS REPORT

The plaintiff, Hudson Surgical Design, Inc. (“Hudson Surgical”) and the defendants, Zimmer Holdings, Inc., Zimmer, Inc., (collectively, “Zimmer”), Rush System for Health and Rush University Medical Center (collectively, “Rush”)¹ submit this Joint Initial Status Report.

**1. The Attorneys Of Record For Each Party
Including The Attorneys Expected To Try The Case**

A. Hudson Surgical

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B. Zimmer

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¹ Hudson Surgical’s original complaint named Rush-Presbyterian Medical Center, Inc. as a defendant. Rush-Presbyterian Medical Center has changed its name to Rush University Medical Center. Accordingly, on April 15, 2008, Hudson Surgical filed a first amended complaint reflecting this name change.

C. Rush

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2. Basis For Federal Jurisdiction

This suit is for patent infringement and arises under the patent laws of the United States. The Court has subject matter jurisdiction under 28 U.S.C. § 1338(a).

**3. The Nature Of The Claims Asserted
In The Complaint And Any Expected Counterclaim**

A. Hudson Surgical

Hudson Surgical alleges that Zimmer and Rush have infringed United States Patent No. 5,543,272, entitled “Method and Apparatus for Tibial Resection” (“the ‘272 patent”) and United States Patent No. 7,344,541, entitled “Methods and Apparatus for Femoral and Tibial Resection” (“the ‘541 patent”). Generally speaking, the patents relate to techniques and associated instruments for total knee replacement (“TKA” for short).

1. Allegations Of Infringement Against Zimmer

Hudson Surgical alleges that Zimmer has infringed the ‘272 patent and the ‘541 patent by making, using, offering for sale, selling and providing instruments for use in TKA techniques that are covered by one or more claims of the patents, including the “NexGen Complete Knee Solution MIS Quad-Sparing Instrumentation” techniques, and by training and otherwise aiding and abetting others to make, to use, to offer for sale, to sell and to provide the instruments and to use and to provide the techniques.

2. Allegations of Infringement Against Rush

Hudson Surgical alleges that Rush has infringed the ‘272 patent and the ‘541 patent by using and providing instruments for use in TKA techniques that are covered by one or more claims of the patents, including the “NexGen Complete Knee Solution MIS Quad-Sparing Instrumentation” techniques, and by training and otherwise aiding and abetting others to use and to provide the instruments and the techniques.

B. Zimmer

Zimmer alleges that it does not infringe the ‘272 or ‘541 patent and also that the patents are

invalid under 35 U.S.C. §102 and/or 103.

C. Rush

No counterclaim at this time; however, Rush has interposed affirmative defenses of non-infringement and invalidity.

**4. The Name Of Any Party Not Yet Served
And The Circumstances Regarding Non-Service**

All the named defendants have been served.

5. The Principal Legal Issues

A. Hudson Surgical

From Hudson Surgical's perspective, the principal legal issues are: the proper construction of the asserted claims of the '272 patent and the '541 patent and, in the event infringement is established, the nature and scope of injunctive relief to prevent further infringement.

B. Zimmer

At present, Zimmer sees the legal issues as claim construction; the standard legal issues associated with invalidity; and whether injunctive relief would be appropriate under any circumstance. Zimmer also reserves the issue of inequitable conduct for discovery.

C. Rush

Non-infringement and invalidity of the '272 and '541 patents.

6. The Principal Factual Issues

Without any party conceding the existence of a genuine issue of fact that would preclude summary judgment, the likely factual issues are believed to be:

A. Hudson Surgical

From Hudson Surgical's perspective, the principal factual issues are: whether the asserted claims, as properly construed, cover the accused instruments and techniques; whether Zimmer and Rush have engaged in acts of infringement; and, in the event infringement is established, the measure of damages adequate to compensate Hudson Surgical for the infringement.

B. Zimmer

Non-infringement, invalidity, and damages if any.

C. Rush

Non-infringement and damages, if any.

7. Whether A Jury Trial Is Expected By Any Party

Hudson Surgical has requested a trial by jury.

8. A Short Description Of Any Discovery Undertaken To Date And Any Anticipated In The Future

The parties have not undertaken any discovery to date. The parties anticipate serving requests for the production of documents and things, interrogatories, requests for admissions and notices of deposition, and third party subpoenas for documents and things and deposition testimony regarding contested issues in the suit. It is further expected that there will be expert discovery. The attached table provides proposed pretrial deadlines.

9. The Earliest Date The Parties Will Be Ready For Trial And The Length Of The Trial

A. Hudson Surgical

Hudson Surgical believes this suit will be ready for trial by May 2009. Hudson Surgical estimates that it will require two days for its case-in-chief and one day for rebuttal.

B. Zimmer

Zimmer estimates trial may take approximately 7 days. Barring significant delay in discovery, claim construction, or dispositive motions/rulings, Zimmer concurs that a trial date in about a year should be feasible.

C. Rush

Rush agrees with Zimmer.

10. Whether The Parties Unanimously Consent To Proceed Before The Magistrate Judge

The parties do not unanimously consent to proceed before the Magistrate Judge.

11. The Status Of Any Settlement Discussions And Whether The Parties Request A Settlement Conference

Hudson Surgical and Zimmer have previously engaged in discussions regarding the patents in suit. Rush has had no previous discussions with Hudson. Rush has sought an indemnification from Zimmer. Consistent with the Court's Standing Order on Settlement Conferences, the parties are willing to discuss settlement, and are willing to participate in a settlement conference.

Respectfully submitted,

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EXHIBIT A – PROPOSED PRETRIAL DEADLINES

Description	Proposed Deadline
Rule 26(a)(1) Disclosures	June 9, 2008
Parties Exchange Preliminary Claim Chart and Their Proposed Constructions	October 3, 2008
Deadline for the Parties to Meet and Confer Regarding Claim Construction	October 17, 2008
Parties Submit Joint Claim Construction Chart to the Court	October 24, 2008
Hudson Surgical Files Opening Claim Construction Brief With Joint Appendix	November 14, 2008
Defendants File Their Opening Claim Construction Briefs	December 5, 2008
Parties Make Available for Deposition Anyone Who Submitted a Substantive Declaration Regarding Claim Construction	December 8, 2008 – January 20, 2009
Hudson Surgical Files Reply Brief on Claim Construction	December 19, 2008
Parties File Final Joint Claim Construction Chart	December 30, 2008
Parties File Joint Pre-hearing Statement	January 13, 2009
Claim Construction Hearing	January 27, 2009
Completion of Fact Discovery	February 27, 2009
Deadline for Serving Expert Reports on Which a Party Has the Burden of Proof	30 Days After the Court Issues its Rulings on Claim Construction
Deadline for Serving Rebuttal Expert Reports	30 Days After the Exchange of Expert Reports on Which a Party Has the Burden of Proof
Deadline for Completing Expert Discovery	30 Days After the Exchange of Rebuttal Expert Reports

Deadline for Filing Dispositive Motions	30 Days After the Completion of Expert Discovery
Deadline for Filing the Pretrial Order	30 Days Before the Trial Date